

Date: Nov 29, 2008

To: HONORABLE RICHARD SULLIVAN
U.S. DISTRICT COURT

From: Leo Barrios
U.S. Pretrial Services Officer

re: Alberto Vilar and Gary Tanaka
S3-05-0621

On 11/19/2008 the defendants were convicted by a jury of securities fraud. The Court set a bail hearing for 11/26/08. On that date, the defendants appear in Court and Your Honor reserved making a bail decision until further information is supplied to the Court by the Government and Pretrial Services. Your Honor ordered that in the mean-time that electronic monitoring be added as part of the defendants' bail conditions. The Court also requested that Pretrial Services provide further information concerning the telephone calls missed by the defendants during curfew checks and to provide a bail recommendation.

Upon further review of the monitoring center reports, the defendants failed to answer the telephone calls during curfew hours or the verification failed on the dates noted below:

Alberto Vilar:

On 6/11/2008, and on 6/14/2008, one telephone call was made respectively on each day at 4:16AM and 2:07AM and the calls were unanswered.

On 6/18/08, at 5:43AM, and 6/21/2008 at 2:15 AM, we received failed verification alerts.

On 6/27/08, two calls were made at 4:23AM, and 4:24 AM and both calls were unanswered.

On 6/28/08, at 3:00AM we received a failed verification, but the defendant did answer the telephone (the system was unable to recognize the defendant's voice. This Officer heard the recording of the voice and confirmed that it was him).

On 7/5/08, two calls were made one at 4:10AM and the other at 4:14AM; the first call was not answered, and the other the defendant hung up the phone before the call was completed.

On 7/11/2008, two calls made to the defendant's residence were unanswered one at 4:08AM and the other at 4:13AM.

On 7/12/2008 (1:54AM), 7/18/2008 (5:06AM), and 7/19/2008 (4:45AM), we received failed verifications, but defendant did answer the telephone on those days (officer verified defendant's voice after hearing the recording).

On 7/23/2008, two calls were made one at 12:54AM and the other at 12:59AM and they were both unanswered.

On 7/26/2008, a telephone call was made at 5:07AM and it was unanswered.

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On 8/30/08, two calls were made at 6:40AM and the other at 6:45AM respectively and they were unanswered.

On 9/6/08, one call was made at 2:50AM and it was unanswered.

On 9/13/08, two calls were made on that morning at 5:38AM and at 5:41AM and both calls were unanswered.

On 9/20/08, two calls were made on that morning at 6:19 and at 6:21AM and both calls were unanswered.

On 9/27/08, two calls were not made on that morning at 3:07AM and at 3:11AM and both calls were unanswered.

On 10/3/2008, one call was unanswered during curfew check at 1:55AM, but the other call made at 1:56AM was answered by the defendant.

On 10/11/2008, two calls made at 5:10AM, and at 5:13AM were unanswered and on 10/24/2008, one call was unanswered at 12:53AM.

It should be noted that the defendant was confronted about not answering the telephone during his curfew hours. The defendant complained that his telephone is far from his bedroom, and that sometimes he does not get to the telephone on time. Some of the calls were answered by the defendant the second time he was called by the monitoring system on many of those days. He has also indicated that the telephone does not ring enough times, and by the time he answers the telephone, the call is already terminated. Lastly, the defendant has indicated that sometimes he is asleep and he does not hear the telephone ring. He has complained about the system repeatedly and has indicated that the system just does not work.

The defendant has called Pretrial Services several times when he was unable to pick up the telephone during curfew checks and left several messages indicating that the telephone did not ring enough times. He also called on occasions to indicate that he was unable to get to the telephone on time and when he answered the call was already terminated. Those calls made by the defendant to this officer were made in or about the same time when curfew checks were being conducted. It is possible that the defendant did not get to the telephone on time. Also, the defendant called to complain on occasions to indicate that his voice failed to record.

Gary Tanaka:

On 6/4/08, a call was made to the defendant's home at 3:33AM and we received no response. On 6/8/08, at 3:30AM we received a "hung up alert" which means that the call was terminated before verifying curfew check.

On 6/9/08, a call was made to the defendant's residence at 3:01AM and we received no answer.

On 6/15/08, we received a "hung up alert" at 4:04AM.

On 6/25 (6:41AM), 6/27 (5:18AM) and 7/6/08 (1:00AM) one call made respectively on those dates went unanswered.

On 7/13 (3:33AM) and 7/20 (2:00AM), we received a "hung up alert" on one call made on each

On 8/2/2008, two calls were made; one was not answered at 2:53AM and the other was answered at 2:55AM but the call was not completed. Therefore the curfew check was not done.

On 8/20/08, we received a failed verification alert at 2:08AM.

On 8/30/08, two calls were made at 6:40AM and the other at 6:45AM respectively and they were unanswered.

On 9/6/08, one call was made at 2:50AM and it was unanswered.

On 9/13/08, two calls were made on that morning at 5:38AM and at 5:41AM and both calls were unanswered.

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On 10/11/2008, two calls made at 5:10AM, and at 5:13AM were unanswered and on 10/24/2008, one call was unanswered at 12:53AM.

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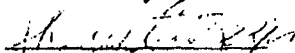
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RECOMMENDATION:

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Our office respectfully requests that the defendants bail be continued with the following changes; (1) curfew enforced by electronic monitoring, and (2) that the cosigners sign an affidavit that they are willing to continue to serve as cosigners, and that they are aware of the defendants conviction and possible sentence.

Respectfully,

Reviewed by:



Sharon T. Regis, SPSO

MICHAEL FITZPATRICK, Chief
U.S. Pretrial Services Chief



Leo Barrios

U.S. Pretrial Services Officer

cc:

Marc Litt, AUSA

Herald Fahringer, Esq. for Alberto Vilar

Glen Colton, Esq. for Gary Tanaka